

ARKANSAS SUPREME COURT

No. CACR 03-1127

ANARIAN CHAD JACKSON
Petitioner

v.

STATE OF ARKANSAS
Respondent

Opinion Delivered December 11, 2008

PRO SE PETITION TO REINVEST
JURISDICTION IN THE TRIAL
COURT TO CONSIDER A PETITION
FOR WRIT OF ERROR CORAM NOBIS
[CIRCUIT COURT OF PULASKI
COUNTY, CR 2001-4006]

PETITION DENIED.

PER CURIAM

In 2003, a jury found petitioner Anarian Chad Jackson guilty of second-degree murder and sentenced him to eighty years' imprisonment in the Arkansas Department of Correction. The Arkansas Court of Appeals affirmed. *Jackson v. State*, CACR 03-1127 (Ark. App. Dec.1, 2004). Petitioner has now filed a pro se petition in this court seeking permission to proceed in the trial court with a petition for writ of error coram nobis.¹ After a judgment has been affirmed on appeal, a petition filed in this court for leave to proceed in the trial court is necessary because the circuit court can entertain a petition for writ of error coram nobis only after we grant permission. *Dansby v. State*, 343 Ark. 635, 37 S.W.3d 599 (2001) (per curiam).

Petitioner asserts as grounds for relief the prosecution's withholding of evidence concerning information as to deals made with two witnesses who had testified that there had been no offers or promises made in exchange for their testimony. In support of his claim, petitioner asserts that the transcript from the sentencing hearing for one witness, Ammar Mahdi, is evidence that the

¹For clerical purposes, the instant petition was assigned the same docket number as the direct appeal.

prosecution did have a deal with Mr. Mahdi for testimony. Petitioner points to testimony by a prosecutor at that hearing that he asserts indicated the prosecution did agree to provide help in exchange for his testimony. Petitioner also alleges that the other witness, Chris Bush, made statements to a cell mate recanting his testimony. He attaches an affidavit from Antonio Jackson in which Mr. Jackson avers that Chris Bush told him that he had been offered a plea of forty years in exchange for his help in convicting petitioner. Petitioner also points to what he alleges is further evidence of a deal in a circuit court record for proceedings against Chris Bush that is not, and was not previously, before this court.

Error coram nobis proceedings are attended by a strong presumption that the judgment of conviction is valid. *Penn v. State*, 282 Ark. 571, 670 S.W.2d 426 (1984) (citing *Troglin v. State*, 257 Ark. 644, 519 S.W.2d 740 (1975)). The function of the writ is to secure relief from a judgment rendered while there existed some fact which would have prevented its rendition if it had been known to the trial court and which, through no negligence or fault of the defendant, was not brought forward before rendition of judgment. *Cloird v. State*, 357 Ark. 446, 182 S.W.3d 477 (2004). A writ of error coram nobis is an extraordinarily rare remedy that is more known for its denial than its approval. *Larimore v. State*, 341 Ark. 397, 17 S.W.3d 87 (2000).

For the writ to issue following the affirmance of a conviction, the petitioner must show a fundamental error of fact extrinsic to the record. *Larimore v. State*, 327 Ark. 271, 938 S.W.2d 818 (1997). The writ is allowed only under compelling circumstances to achieve justice and to address errors of the most fundamental nature. *Pitts v. State*, 336 Ark. 580, 986 S.W.2d 407 (1999) (per curiam). We have held that a writ of error coram nobis was available to address certain errors that are found in one of four categories: insanity at the time of trial, a coerced guilty plea, material

evidence withheld by the prosecutor, or a third-party confession to the crime during the time between conviction and appeal. *Id.* at 583, 986 S.W.2d at 409.

Here, petitioner has alleged that evidence was withheld by the prosecutor. He asserts violations of his right to due process as guaranteed by *Brady v. Maryland*, 373 U.S. 83 (1963). As to petitioner's claim concerning Ammar Mahdi, however, it is clear that he has failed to demonstrate due diligence in seeking error coram nobis relief, even though he has alleged a fundamental error of fact falling within one of the recognized categories.

While there is no specific time limit for seeking a writ of error coram nobis, due diligence is required in making an application for relief and in the absence of a valid excuse for delay, the petition will be denied. *Echols v. State*, 360 Ark. 332, 201 S.W.3d 890 (2005). Due diligence requires satisfaction of certain conditions, as follows: (1) the defendant be unaware of the fact at the time of trial; (2) the defendant could not have, in the exercise of due diligence, presented the fact at trial; (3) upon discovering the fact, the defendant did not delay bringing the petition. *Id.* Petitioner was aware of the facts concerning Mr. Mahdi at trial. The court of appeals decision on direct appeal notes that petitioner was in possession of a copy of the transcript from Mr. Mahdi's sentencing hearing during the trial. Petitioner was aware of the alleged fundamental error of fact and had opportunity to seek correction of the error more than five years ago.

In a reply to the State's response to his petition that was tendered to this court, petitioner cites *Sanders v. State*, ___ Ark. ___, ___ S.W.3d ___ (Jun. 19, 2008) (per curiam), in support of an exception to our due diligence rule. But, in *Sanders*, a document granting full immunity to the witness was not in the file for the petitioner's case, but was only discovered in the case file for the prosecution's case against the witness during the course of proceedings by the petitioner under

Arkansas Rule of Criminal Procedure 37.5. The trial court accelerated the preparation of a partial record to permit the petitioner in that case to bring a petition in this court to reinvest jurisdiction for consideration of a petition for writ of error coram nobis. Unlike petitioner's circumstances, where counsel was aware of the facts and argued those facts at trial, in *Sanders*, the facts supporting a claim of withheld evidence only came to light after the trial and within a short period of time before the petitioner sought the writ. Diligence was clearly not an issue under the circumstances in *Sanders*.

As to petitioner's allegations concerning Chris Bush, he does not provide a cognizable claim of fundamental error supported by sufficient facts. Petitioner's claim that Chris Bush recanted his testimony is not cognizable in an error coram nobis proceeding. *Sanders*, ___ Ark. at ___, ___ S.W.3d at ___ (citing *Smith v. State*, 200 Ark. 767, 140 S.W.2d 675 (1940)). Petitioner also alleges that the record of proceedings against Chris Bush shows that certain charges were nol prosed after he made a statement against petitioner. While petitioner appears to allege that the record indicated that the prosecution nol prosed the charges pursuant to an agreement, he does not state any facts to support such a conclusion.

The court is not required to accept at face value the allegations of the petition. *Penn*, 282 Ark. at 574-575, 670 S.W.2d at 428 (again citing *Troglin*, 257 Ark. at 645-646, 519 S.W.2d at 741). The mere naked allegation that a constitutional right has been invaded will not suffice and an application should make full disclosure of specific facts, rather than merely state conclusions as to the nature of such facts. *Cloird*, 357 Ark. at 450, 182 S.W.3d at 479. As petitioner's claims do not justify reinvesting jurisdiction in the trial court to consider a petition for writ of error coram nobis, we deny the petition.

Petition denied.